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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,858	12/14/2000	Jackson B. Hester JR.	6295.N CN1	8319

7590 07/29/2003

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EXAMINER

COLEMAN, BRENDA LIBBY

ART UNIT

PAPER NUMBER

1624

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/736,858

Applicant(s)

HESTER ET AL.

Examiner

Brenda L. Coleman

Art Unit

1624

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: 23-25, 39-41, 43-46, 57-60 and 62-65.Claim(s) rejected: 1-14, 16, 17, 22, 30-36, 38, 42, 47-56, 61 and 66.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ADVISORY ACTION

Claims 1-14, 16, 17, 22-25, 30-36 and 38-66 are pending in the application.

The shortened statutory period for reply expires THREE MONTHS from the mailing date of the final rejection or as of the mailing date of this advisory action, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Any extension fee required pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for reply expires as set forth above.

1. The applicant's request for reconsideration and entry of the amendment filed July 11, 2003 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because: the new matter presented in the amendment to claims 1 and 47 is such that the definition of the substituent of phenyl in R_5 includes subject matter which is not supported in the disclosure or the originally filed claims. The amendment to claims 1 and 47 is such that "at each occurrence of phenyl in R_5 , the phenyl is optionally substituted with CF_3 and CH_3 in addition to one or more halo, CN, NO_2 , phenyl, C_{3-6} cycloalkyl, OR_7 , $C(=O)R_7$, $OC(=O)R_7$, $C(=O)OR_7$, $S(=O)_mR_7$, $S(=O)_mNR_7R_7$, $NR_7SO_2R_7$, $NR_7SO_2NR_7R_7$, $NR_7C(=O)R_7$, $C(=O)NR_7R_7$ or NR_7R_7 ". The applicants urge that no new matter has been added, however, the amendment to claims 1 and 47 still includes the limitation that the phenyl of R_6 can be substituted with CF_3 and CH_3 since R_6 is within the definition of R_5 .
2. In addition to the presence of new matter the following rejections were also noticed with respect to the amendment filed July 11, 2003:


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- a) Claim 1 defines A as a structure of i, ii, iii, or iv, however, there are no structures i, iii, or iv in the claim.
- b) Claim 1 does not end with a period.
- c) Claim 9 is missing a verb with respect to the definition of X.
- d) Claim 16 does not end with a period.
- e) Claim 47 contains an unmatched charge in the definition of Z.
- f) Claim 47 contains a reference to a ----- in structure iii, however, there is no structure iii in the claim.
- g) Claim 54 is missing a verb with respect to the definition of X.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 703-305-1880. The examiner can normally be reached on 8:30-5:00 Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached on 703-308-4716. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.


Brenda Coleman
Primary Examiner Art Unit 1624
July 25, 2003